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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,759	06/15/2001	Paul McAlinden	ITL.0600US (P11741)	9776
21906 7590 12/20/2007 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER DANIEL JR, WILLIE J	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 12/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/882,759

Applicant(s)

MCALINDEN, PAUL

Examiner

Willie J. Daniel, Jr.

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

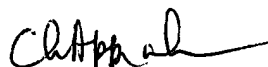
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



CHARLES N. APIAH
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant's arguments filed 03 December 2007 have been fully considered but they are not persuasive. The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the comments in this section and Final Action mailed on 19 October 2007).

2. Regarding applicant's argument on pg. 7, 5th full paragraph, "...can be no misunderstanding of the language...", the Examiner respectfully disagrees. As a note, applicant on pg. 7, 2nd and 5th full paragraph similarly admits "...three different embodiments..."; "...configuration is desirable in ONE of several ways"; "...three different ways of determining if configuration is desirable...". Consequently, the configuration is desired by choosing ONE of the several ways not a combination of any two or more of the ways. Therefore, in view of above, the 112 rejection is hereby maintained.

3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's argument of claim 44 on pg. 9, 1st full paragraph, "...does not correspond to what is claimed...base station is not involved in any way...no detection of the problem in response to a booting of the portable device...", the Examiner respectfully disagrees. Applicant has failed to appreciate the combined teachings of well-known prior art Fette, Webster, Kirkpatrick, Imamatsu, and Criss that clearly discloses the claimed feature(s) as would be clearly recognized by one of ordinary skill in the art. As a note, Kirkpatrick discloses the feature(s) configuration of the portable device (e.g., cellular telephone) is desired based upon detection of a problem by the base station (14) (see col. 5, lines 1-7,9-16), where the base station includes a test device for determining faults of a cellular telephone. In particular, Imamatsu discloses the feature(s) wherein the CPU (22) which reads on the claimed "control unit" to execute the configuration application to verify that configuration of the mobile terminal device (10) which reads on the claimed "portable device" is desired based upon detection of the problem by the base station (103) (see col. 4, lines 10-17,43-47; col. 9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the software-supply device (50) via the base station (103) determines mobile device (10) does not have the latest software version which indicates a problem. For example, a mobile device not having the latest software version indicates a problem in which a subscriber may not have access to all services or the service provider may not be able to provide new or existing services to a subscriber as evidenced by the fact that one of ordinary skill in the art would clearly recognize. As further support in the same field of endeavor, Criss discloses the feature(s) in response to booting the portable device (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the mobile terminal goes through a boot-up routing or initialization in which the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade. Therefore, the combination(s) of the reference(s) Fette, Webster, Kirkpatrick, Imamatsu, and Criss as addressed above more than adequately meets the claim limitations.